

# Outreach

Spring 2005

## Governor's Message On The 60th Anniversary Of The NJ Law Against Discrimination *by Acting Governor Richard J. Codey*

Sixty years ago, the State of New Jersey took a historic step and enacted the Law Against Discrimination, protecting individuals in our state from discrimination.

Today, we are proud to live in a state that values equality, justice and equal opportunity for all people. These are the values that I see in the decent, hard-working people I meet while traveling throughout New Jersey.

Unfortunately, there are some who do not recognize the need to respect all peoples. Through their words and their actions, they harm more than just a particular ethnic or religious group; they threaten all of us who value New Jersey's diversity and culture and America's commitment to freedom and justice.

The Law Against Discrimination gives us an important tool to protect the citizens of New Jersey from bias, hatred and racism. As we mark this milestone in the law's history, I commend the New Jersey Division on Civil Rights and Director Vespa-Papaleo for outstanding leadership in the effort to combat unlawful discrimination.

But it will take more than laws to win the battle against hatred and bias. Racial slurs, burning crosses and swastikas are only symptoms of the problem; they are not the cause. If we are to eliminate hatred, racism and bigotry, we must educate our society and build a strong foundation for a world that clearly has no place for bias.

When I became Acting Governor, I made a commitment not to change who I am or the values I hold. I want to serve my time with dignity and provide stability to our State government. I want to start the process of



restoring the public's trust in the institutions of government.

Through agencies such as the Division on Civil Rights, we can be an advocate for people who are in need, but without the resources to hire a lobbyist or make a political contribution.

We must also reach out and help the families and individuals who struggle every day with mental health. In addition, I want to make our schools a safer place for our children, and I want to make sure that the potential of stem

cell research is realized right here in New Jersey. Most importantly, I want to build bipartisan consensus and solutions.

These are the values that I bring to the Governor's office – the same ones that have served me my entire life.

As Acting Governor, I'm proud of the progress we've made in New Jersey, but there still is much work ahead of us. With your support and dedication, let us work together in the days ahead to make New Jersey a better place for all peoples. ▼

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## Your Rights. Our Commitment. The New Jersey Law Against Discrimination Turns Sixty *by Attorney General Peter C. Harvey*



Attorney General  
Peter C. Harvey

As World War II was drawing to a close, the New Jersey Legislature seized on an opportunity to create a bold new law to combat discrimination.

Introduced on March 12, 1945 by Newark Assemblyman Dr. James O. Hill, passed unanimously by the Assembly and the Senate, and signed into law on April 16, 1945 by Governor Walter Edge, the New Jersey Law Against Discrimination (LAD) was the first of its kind in the nation.

Consider the foresight of the New Jersey Legislature in its time.

Its members envisioned, deliberated on, and ultimately adopted the nation's first comprehensive anti-discrimination law nearly two decades before Dr. Martin Luther King, Jr. warned, in his historic 1963 letter to fellow clergy from the Birmingham City Jail, that "injustice anywhere is a threat to justice everywhere."

New Jersey lawmakers did it three decades before the late Egyptian President Anwar Sadat reminded us, in his 1978 memoir *In Search of Identity*, that "there can be hope only for a society which acts as one big family, not as many separate ones."

And they did it at a time when our nation was preoccupied in World War II – in two separate world theaters – with ensuring that foreign powers seemingly bent on world domination and the spread of evil were stopped.

The LAD is a testament to New Jersey's pioneering quest for fairness and equality for all. And while its creators could not have envisioned the particulars of future change, the LAD continues to serve all New Jerseyans.

The continuing visibility of the LAD is due to three principal factors: the vision of the law's original architects, the elasticity of the statute resulting from periodic amendments, and consistent enforcement by the Attorney General's Office over the past 60 years.

When the LAD was signed into law, the New Jersey Division on Civil Rights was created to enforce it, and to educate the state's residents about the rights and obligations it carried.

Today, the Division and the Attorney General's Office continue to work tirelessly to fulfill the LAD's mission and goals.

In 2003, for example, we filed housing discrimination lawsuits against landlords in Essex, Hunterdon and Passaic counties, and against one real estate firm in Atlantic County, charging them with unlawfully refusing to accept certain tenants because they intended to pay using federal rental assistance vouchers.

These lawsuits were the first prosecutions filed under a new State law that prohibits housing discrimination by landlords on the basis of a person's source of lawful income, or rental subsidy. Ultimately, we reached settlement agreements in 2004 requiring those Respondents to: pay the State a total of more than \$80,000, to submit their rental practices to State monitoring, and to provide housing-discrimination-related training to their employees as well as, in the case of the Shore-area real estate agency, about 1,000 real estate professionals in three South Jersey counties.

Through enforcement by the Division on Civil Rights' Housing Investigations Unit, there has been extensive outreach and education for landlords, property owners, Realtors and those who publish housing advertisements of their obligations according to the law, and the penalties for non-compliance.

Similarly, we have been aggressive in investigating and, where appropriate, prosecuting discrimination in other walks of life.

We have prosecuted businesses for allowing a hostile work environment to exist toward females and minorities. (*Clayton v. Instant Printing, Inc.*; *Valencia v. Route 23 Honda*).

We have prosecuted individuals for sexually harassing co-workers. (*Flores v. Albarracin*).

We have prosecuted a motel operator for discriminating against a disabled person by refusing accommodations to him and his licensed, registered guide dog. (*McHugh v. Lin*).

We have prosecuted a school district for failing to deal effectively with the bullying of a high school student perceived to be homosexual. (*L.W. v. Toms River Regional Schools Board of Education*).

And we are currently prosecuting a major movie theater company – Regal Cinemas – for failing to adequately accommodate the deaf, the hard of hearing, and those with vision loss. (*State of New Jersey v. Anschutz Corporation d/b/a Regal Entertainment Group or Regal Cinemas, Inc.*).

In each case, we have made a point of publicizing the prosecutions as a means of raising awareness, and letting the public know we are serious about combating discrimination. A copy of our press releases regarding the aforementioned matters can be found at [www.NJCivilRights.org](http://www.NJCivilRights.org).

Still, it happens too often that minorities in search of housing allege they have received disparate treatment, and State investigation through the use of black and white "testers" confirms they are correct.

Too often we hear allegations that people are being "steered" into a community by real estate renters and sellers because that community is "more black" or "more Asian."

Too often women are alleging that they are being sexually harassed on the job. And too often a person with a disability – such as deafness or hearing loss – expresses frustration because a business owner he or she tried to contact by phone via a TTY device or "telephone typewriter" hung up.

We are committed to eradicating unlawful discrimination on all fronts. We know that six decades on, no matter how much we have accomplished, there is still much work to be done.

Dr. King admonished us that, "All labor that uplifts humanity has dignity and importance and should be undertaken with painstaking excellence."

This is certainly a guiding principle for all of us at the Attorney General's Office, which includes the Division on Civil Rights.

As we continue to work together to accomplish the goals set forth by the LAD all those years ago, we will take care to live up to Dr. King's words of wisdom, and endeavor to eliminate unlawful discrimination wherever we may find it. ▼



## From the Desk of the Director: Sixty Years Old and Going Strong: The NJ Law Against Discrimination



Director J. Frank Vespa-Papaleo

As 2004 drew to a close and 2005 began, we have seen the NJ Law Against Discrimination enter its sixtieth year and it has never seemed so vibrant.

While enforcing the nation's oldest state civil rights statute, over the

course of the past year the Division received nearly 20,000 inquiries from constituents, attorneys, employers, union leaders, housing providers, real estate professionals, students, and parents. Our staff, as small as it is, was able to complete investigations on nearly 1200 cases in 2004 and reduce our backlog of cases. Our Mediation Unit was also recognized nationally by EEOC and received a contract to conduct mediations for the US EEOC. This is good news for all involved as it keeps litigation costs down and saves the tax dollars that allow the Division to fulfill its mission.

Our Housing/MDRR Investigation Unit offered for the first time the ability to file the Multiple Dwelling Rule Report online – a time and cost savings function which was well received by property owners throughout the state. Close to one-third of property owners used the new paperless e-filing system. Next year's goal is to make the entire filing system paperless.

One result of the Housing Unit's work was the settlement with four different property owners in a case regarding source of lawful income (Section 8) discrimination. This is a significant step to making it clear to all New Jersey property owners that the State is ensuring that everyone is given their fair chance at finding housing. Additionally, this year New Jersey entered into a formalized contract with the US Department of Housing and Urban Development, making the DCR the principal investigatory agency for housing discrimination matters in the State.

At the same time, the Disabilities/Public Accommodations Unit has been working aggressively to streamline the processing of disability and public accommodation cases while raising public awareness of the rights

of persons with disabilities. The Division promoted this awareness with the Second Annual Disability Law Conference held on March 9 and 23 in Ancora and Paramus. This year, the Division focused on the rights of persons with mental disabilities and the turnout surpassed expectations. You can read more about the conference on page 9, but on behalf of the Division, I would like to thank everyone who made this year's conference a success.

Robert Kennedy once said that each generation makes its own accounting to its children and asked "if not us, then who will lessen the suffering of our children?" Under the leadership of Acting Governor Codey and Attorney General Peter C. Harvey, the Division has taken steps to ensure that our accounting to New Jersey's children has a positive balance.

Leading up to this anniversary year of the nation's oldest state anti-discrimination law, a very important DCR ruling was issued against the Toms River Board of Education on behalf of a parent and her son, who had been repeatedly harassed and assaulted because of the perception that he was gay.

The school board has appealed this decision, a move which has brought a number of organizations to rally around the Division's decision. Indeed, in mid-February a brief was filed on behalf of several *amicus curia* seeking to uphold the decision in favor of the student and his mother. The *amici* included the American Civil Liberties Union of New Jersey, Association of Children of New Jersey, Education Law Center, Gay Lesbian and Straight Education Network of Northern New Jersey, National Conference for Community and Justice, New Jersey Family Voices, Roxbury Parents for Exceptional Children, and Statewide Parents Advocacy Network of New Jersey.

But bullying and harassment are not the only forms of discrimination our children face. Even in sports, lines are drawn and violations of the LAD abound. In the opening months of 2005, there were two cases in which young girls were not allowed to play organized sports with

young boys simply because of their gender and not because of ability.

Additionally, there was an important case involving a nursery school's refusal to accommodate an applicant who had a peanut allergy. As the peanut allergy has become more widespread, so should awareness about the rights of students with various conditions and disabilities.

We are also in the midst of one of the most complex and important litigations in the Division's recent history—a lawsuit we filed against Regal Cinemas to require them to make their NJ theaters accessible to persons who are deaf, hard of hearing, blind, or visually-impaired, comprising more than 900,000 residents of the State. This initiative has made New Jersey the nation's leader in bringing equal access to movies to our residents, and we will continue to fight hard for them, and especially for children who can benefit from greater access to communication.

Enforcing a 60-year-old law can take on many forms and as we look back to the closing months of World War II when New Jersey legislators took the time to answer the call for equality, we look forward and know that with their rights affirmed and the spirit of anti-discrimination demonstrated, our children will continue to pass on a positive balance of fairness to the future. After 60 years of trying to end unlawful discrimination, may we all gain strength in knowing that we have all made New Jersey a better place to live, work, and enjoy life. While we have done much, though, we have much more to do. For that reason, we at the Division once again pledge to let all people in New Jersey know that Your Rights are Our Commitment. ▼

Need Help with Housing Discrimination?

Call the toll-free  
Civil Rights  
Housing Hotline at  
1-866-405-3050



## Support For Division's School Bullying Decision

Several organizations, led by the American Civil Liberties Union of New Jersey, have joined together to urge the Appellate Division of the Superior Court to affirm a recent ruling by the Director which found that a school district violated the Law Against Discrimination when it failed to prevent and stop harassment of a student by other students because of his perceived sexual orientation.

"Children should not have to be afraid of going to school for fear of being harassed and parents should not have to worry that their children will be subjected to discrimination," said Deborah Jacobs, Executive Director of the ACLU of New Jersey.

In the case, a student was subjected to ongoing incidents of verbal and physical abuse by other students because they perceived him to be gay. These incidents included being subjected to a simulated sex act while in line in the school cafeteria

and being beaten by neck chains in the school locker rooms.

The school district addressed each reported incident by counseling the student harasser, but in the meantime, other students continued the harassment. The school district never modified its discrimination policies to advise parents and students that harassment based on actual or perceived sexual orientation was prohibited and never undertook any training of the student body to prevent future recurrences.

The Director found the school district liable for the harassment. In addition to awarding damages for emotional distress to the student and his mother, the Director ordered the school district to modify its policies to address anti-homosexual harassment and to implement an anti-bullying training program. The school district filed an appeal.

Eight organizations, all of which advocate the rights of children, joined together to file

an *amicus curiae*, or friend of the court, brief. In addition to the ACLU, organizations joining in the brief include the Association for Children of New Jersey, the Education Law Center, the Gay Lesbian and Straight Education Network (GLSEN), National Conference for Community and Justice (NJ)(formerly the National Conference for Christians and Jews), Roxbury Parents for Exceptional Children, Statewide Parents Advocacy Network and New Jersey Voices.

The amici provide the court with social science research on the harms of bullying and peer student harassment, and urge the court to adopt the Director's remedial scheme in order to create a nondiscriminatory learning environment. The attorneys who filed the brief are from the ACLU and Gibbons, Del Deo, Dolan, Griffinger & Vecchione in Newark.

A copy of the Director's decision in this case is available on the Division's Web site, [www.NJCivilRights.org](http://www.NJCivilRights.org) ▼

## Division Staff Training 2005: Your Rights. Our Commitment.

On January 4, 2005, the Division staff assembled at the Hughes Justice Complex in Trenton to receive updates on the law, procedures and policies by State experts. First Assistant Attorney General Mariellen Dugan (above right) gave the keynote address for the 60th anniversary year of the NJ Law Against Discrimination under the slogan "Your Rights. Our Commitment."

Guest speaker Steven Aduato Jr., below right, with Commissioner Dr. Joan Rivitz, Director Vespa-Papaleo and the event's co-coordinator Esther Nevarez, helped the Division outline its core competencies.



above Cassandra Jetter, Roberto Bustamante and Waleska Lucas helped ensure the day went off without a hitch.



## Employer Advisory Council Holds Second Meeting

On January 12, 2005, the second meeting of the Employer Advisory Council was hosted by Jeffrey Kaszerman of the New Jersey Society of CPAs. Co-Chair Kaszerman is the Government Relations Manager at the Society of CPAs, the second largest professional Association in New Jersey.

"We're pleased to have the opportunity to host this group," said Kaszerman. "It's vital that employers have the opportunity to sit down with policy makers to explain what it is each group needs and wants from the other. The members of this council have already benefitted from the Division's responsiveness to ideas developed in our meetings and I think the employers represented here are learning a lot about how to work better with the Division."

Director J. Frank Vespa-Papaleo was quick to agree with him, adding "Having Jeffrey Kaszerman serve as Co-chair has been a great asset to the Council. His familiarity with business and government means he knows how to bridge the gap between private employers and government officials."

Mr. Kaszerman was joined by three other Co-chairs: Christine Sterns, Vice President Health & Legal Affairs at NJBIA; Pamela Poff, Deputy General Counsel and Senior



*EAC Co-Chairs Jeffrey Kaszerman, Christine Sterns and Armando Riccio with Director Vespa-Papaleo*

Vice President with UBS Financial Services Inc.; and Gene Mulroy of Holt, Mulroy & Germann Public Affairs L.L.C.

Over 40 participants made full use of the opportunity to learn about the Division on Civil Rights and its procedures, ask questions of the senior staff and Deputy Attorneys General present, and offer suggestions for how the DCR can work more effectively with the employer community in New Jersey.

Deputy Attorney General Jim Michael presented information on proposed changes in the DCR regulations to the group. These regulations will streamline DCR procedures, and organize them in a user-friendly format. (For more on this topic, see the article on page 10.) Deputy Attorney General Charles Cohen and Assistant Director Gary LoCassio provided concrete suggestions on how to optimize interactions with DCR investigative and legal staff.

A wide range of topics arose during the session, from substantive law issues such as reasonable accommodations in disabilities cases and how to address confidentiality issues in internal workplace investigations to procedural issues about DCR deadlines. A new DCR publication called *Employing Workers with Disabilities, Incentives & Recommendations* was created based on questions from the first Employer Advisory Council Meeting, and distributed to participants.

For additional information regarding the Employer Advisory Council, please contact Special Assistant Bear Atwood, Esq. at 609-292-5326 or

[bear.atwood@lps.state.nj.us](mailto:bear.atwood@lps.state.nj.us) ▼



## Division Staff Pitch In

*left* Division investigator Elbia Concepcion recently successfully completed training for the State Police sponsored Community Emergency Response Team.

*right* Pitching in at St. John's Soup Kitchen are Division staff and family members Leona Draughn, Anthony Papaleo, Ninoshka E. Lucas, Benn Meistrich, and Deputy Attorneys General Anne Marie Kelly and Cristina Patel.





RICHARD J. CODEY  
Acting Governor

*State of New Jersey*  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
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PETER C. HARVEY  
*Attorney General*

J. FRANK VESPA-PAPALEO, ESQ.  
*Director*

**DATE:** January 2005

**TO:** Real Estate Agents, Brokers, and Owners of Real Property in New Jersey

**FROM:** Peter C. Harvey, *Attorney General*, State of New Jersey  
J. Frank Vespa-Papaleo, *Director*, New Jersey Division on Civil Rights

**SUBJECT:** New Jersey Law Against Discrimination and Federal Fair Housing Laws

The rules of the New Jersey Real Estate Commission require every licensed broker or salesperson with whom you are listing your property for sale or for rent to give you a copy of this legal memorandum. The purpose of this memorandum is to help you comply with the New Jersey Law Against Discrimination ("LAD") and federal laws that prohibit discrimination in the sale or rental of real property.

Together, the LAD and the Fair Housing Amendments Act of 1988 prohibit you from discriminating against a prospective buyer or tenant because of his/her race, creed, color, national origin, sex, marital status, affectional or sexual orientation, familial status, actual or perceived physical or mental disability, ancestry, nationality, and domestic partner status. (Note: "familial status" refers to families with a child or children under 18 years old and/or pregnant women. "Disability" includes persons afflicted with AIDS or HIV or perceived to be afflicted with AIDS.) The LAD also prohibits housing discrimination based on the source of lawful income or source of lawful rent or mortgage payment a tenant or purchaser uses. This means, for example, that **a landlord cannot deny the lawful recipient of a Section 8 HUD voucher the right to rent an apartment based on that source of lawful income.**

The following are some of the requirements that apply to the sale or rental of real property:

1. All persons, regardless of their membership in one of the protected classes stated above or source of lawful income used for rent or mortgage payments, are entitled to equal treatment in the terms, conditions or privileges of the sale or rental of any real property (e.g., it is illegal to deny that housing is available for inspection, sale or rent when it really is available);
2. No discriminatory advertising of any kind relating to the proposed sale or rental is permitted;
3. The broker or salesperson with whom you list your property must refuse the listing if you indicate any intention of discriminating on any of the aforesaid bases;
4. The broker or salesperson with whom you list your property must transmit to you every written offer he/she receives on your property;
5. Any provision in any lease or rental agreement prohibiting maintenance of a pet or pets on the premises is not applicable to a service or guide dog owned by a disabled, blind or deaf tenant;
6. A landlord may not charge a tenant with a disability an extra fee for keeping a service or guide dog; and

7. As landlord, you must permit a tenant with a disability, at that tenant's own expense, to make reasonable modifications to the existing premises if such modifications are necessary to afford such person full enjoyment of the premises.

The sale or rental of all property including open land, whether for business or residential purposes, is covered by the LAD, with the following exceptions:

1. The rental of a single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as his/her residence at the time of such rentals;
2. The rental of a room or rooms to another person or persons by the owner or occupant of a one family dwelling occupied by him/her as his/her residence at the time of such rental;
3. In the sale, lease or rental of real property, preference given to persons of the same religion by a religious organization; and
4. The prohibition against discrimination on the basis of familial status does not apply to housing for older persons (as defined in the LAD at **N.J.S.A. 10:5-5mm**).

Note: The first two exceptions do **not** apply if the dwelling was built or substantially rebuilt with the use of public funds, or financed in whole or in part by a loan, or a commitment for a loan, guaranteed or insured by any agency of the federal government. The term "any agency of the federal government" includes, but is not limited to, the Federal Housing Administration (FHA) or the Veterans Administration (VA), which are most commonly used in such matters. Furthermore, discrimination in connection with some of the transactions covered by the above-described exceptions may nevertheless be prohibited under the Federal Civil Rights Act of 1866 (42 **U.S.C.** 1981, 1982).

Brokers and salespersons are licensed by the New Jersey Real Estate Commission. Their activities are subject to the general real estate laws of the State and the Commission's own rules and regulations. The New Jersey Law Against Discrimination applies to all people in the State and is enforced by the Division on Civil Rights, Office of the Attorney General, the Department of Law and Public Safety.

Should you require additional information or have any questions, including how to report a complaint, please review the Division's Web site at **[www.NJCivilRights.org](http://www.NJCivilRights.org)** or contact the Division on Civil Rights **Housing Hotline** toll free at **(866) 405-3050**. Please contact the Division if you desire securing the services of a Division trainer on the subject of housing discrimination.

Sincerely yours,



PETER C. HARVEY  
*Attorney General*



J. FRANK VESPA-PAPALEO, ESQ.  
*Director*





# A Case Study in New Jersey's Family Leave Act

by Assistant Director Gary LoCassio

True to its tradition of protecting working families, the New Jersey Legislature in 1989 passed the state Family Leave Act (FLA) to provide job security to working men and women who need time to care for their young children or seriously ill family members. Four years later, Congress passed the Federal Family and Medical Leave Act (FMLA), which expanded worker protection by also providing leave for employees to recover from their own medical conditions. In combination, these laws offer critical job protection that enables wage earners to balance the demands of work and family. But for employers, the challenge of understanding how these laws fit together to govern leave entitlements can be formidable and, as I will discuss, the analysis is further complicated by civil rights laws which may require granting additional time off as a form of reasonable accommodation.

Director Frank Vespa-Papaleo provides an instructive analysis of these issues in *Cebula v. Catalina Marketing Corporation*, one of the important administrative orders issued during 2004. The facts in this case are relatively straightforward. Suzanne Cebula was employed by Catalina Marketing as a client service executive. When she became pregnant, Catalina advised her that she was entitled to a twelve-week maternity leave under the Federal Family and Medical Leave Act, and Ms. Cebula commenced her leave shortly before giving birth. Seven days prior to the expiration of her leave, Catalina received a fax from Cebula's doctor indicating that she would be unable to return to work as scheduled because of a back ailment related to her pregnancy. Subsequently, Catalina's human resource supervisor denied Cebula's request for an extension of leave because Catalina's policy limited maternity leaves to the twelve weeks mandated by the FMLA. Instead, Catalina offered Ms. Cebula a part-time position but, before Cebula could respond, terminated her employment two days after she was

scheduled to return from leave. The Director found that Cebula's termination violated both the FLA and the New Jersey Law Against Discrimination (LAD).

Catalina's maternity leave policy illustrates some of the common pitfalls employers must avoid when developing and implementing leave policies. The policy's most basic flaw was its failure to recognize that, because the FLA does not provide leave for an employee's own illness or disability, an employee who has taken a medical leave under the FMLA for a pregnancy-related disability has not yet taken leave for a reason covered under the FLA. Such an employee may still be entitled to an additional twelve-week FLA leave to care for the newborn, and this is true even if the employee, like Ms. Cebula, is physically unable to return to work. Thus, a policy that rigidly restricts combined family and medical leave to twelve weeks may violate the FLA where a pregnant employee first takes medical leave for her pregnancy-related disability, and then seeks time off for care of her newborn.

The Director found Catalina also failed to give Cebula proper notice of her rights to family leave as required by the FLA. Even though Catalina had conspicuously displayed the appropriate FLA poster, the information contained in its handbook and communicated verbally to Ms. Cebula clearly misstated her FLA entitlement, and rendered the posting ineffective as a means of informing Cebula of her rights under the act. Moreover, once Cebula asked for an extension of leave after the expiration of her 12 weeks of medical leave, Catalina should have known that she was entitled to child care leave under the FLA separate and apart from any medical leave she had taken, and informed her of this right. Employers should be mindful that to request leave under the FLA, an employee need not use the magic words "family leave," but need only provide her employer sufficient information to alert it

that she plans to take time off for a reason covered by the act. Here, Catalina's failure to properly inform Ms. Cebula prevented her from requesting the child care leave to which she was entitled. Accordingly, the Director found that Catalina's failure to properly inform Cebula of her family leave entitlement and its subsequent denial of leave violated the FLA.

The Catalina leave policy was also flawed in that it did not take into account that the LAD may require an extension of medical leave beyond what even the FMLA demands. Under the LAD, an employee who needs leave related to a disability is entitled to such leave if there is no other effective accommodation and the leave will not cause an undue hardship. A mistake employers commonly make is to assume that granting disability leave pursuant to the FMLA will satisfy any obligation to provide a reasonable accommodation under civil rights statutes protecting workers with disabilities. The key for employers is to determine an employee's rights under each statute separately, and decide whether the amount of leave requested must be granted. Because the Law Against Discrimination covers people with even temporary disabilities, Catalina was required to consider whether it could provide Cebula an accommodation that would allow her to retain her position. Based on the record in this case, the Director concluded that Catalina could have granted Cebula an extension of leave without undue hardship, and that by terminating her it also violated the LAD.

The Director's order in Cebula provides a thorough explanation of the legal standards that govern the application and interrelation of the FLA, FMLA, and disability provisions of the LAD, and we encourage you to read the case in its entirety on the Division's Web site at [www.NJCivilRights.org](http://www.NJCivilRights.org). Also check the site's compendium of Director's orders, which provides a synopsis of all the orders featured on the Web site. A complete version of each is also available. ▼



## Protecting the Rights of People with Mental Disabilities

The 2<sup>nd</sup> Annual Disability Law Conference: *Protecting the Rights of People with Mental Disabilities* is evidence of our state's extensive outreach to New Jersey residents with disabilities as a part of the Disability and Public Accommodation Special Investigation Unit.

Under the leadership and guidance of acting Governor Richard J. Codey, who has made mental disabilities and mental illness a priority policy issue, these conferences brought renewed awareness to the public about mental disabilities, and hopefully result in positive changes.

"This conference supports our broader efforts to eliminate the stigma associated with mental illness," Codey said. "By educating the public about the rights of individuals of mental illness, we are helping break down the barriers they too often face."

Following the first Annual Disability Law Conference: *Protecting the Rights of People with Hearing Loss* in 2004, great strides were made on behalf of the Deaf and hard of hearing community. Attorney General Peter C. Harvey and Director Vespa-Papaleo seized the initiative and the momentum of the conference to increase captioning for movies in five major movie theater chains and to ensure hospitals provide reasonable accommodations to Deaf and hard of hearing patients. Similar progress is hoped for after this conference with its special focus on mental disabilities.

Director Frank Vespa-Papaleo chose to focus on mental disabilities for 2005 "because we have seen an increase in those cases and it is a critical part of the community, and often misunderstood by employers and advocates." The mentally disabled community is growing and crosses all ethnic, racial and gender boundaries.

The Division's main goal with these conferences was to educate attendees about the New Jersey Law Against Discrimination and ensure that New Jersey citizens are made aware of their rights to



*above* From left to right: Charles Cohen, DAG; Director Frank Vespa-Papaleo; Joseph Gehring, Jr., Esq.; Mary Ciccone of NJP&A; David Lazarus, Director of Litigation, NJ Community Health Law Project; Jay Yudof, NAMI-NJ; Marie Verna, Director of Mental Health Association of New Jersey; Kevin Martone, Governor's Task Force on Mental Health; Corrado Gigante, Director of Newark EEOC; Wayne Vivian, President of Coalition of Mental Health Consumers Organization; Chris Tester, Conference Coordinator.

*above right* Director Vespa-Papaleo with Special Projects Coordinator Chris Tester and Co-sponsors Nancy Carr, Director of Bergen Community College Office of Specialized Services and Jim Thebery, Director of Bergen County Division of Disability Services.



accommodation, employment, housing, education and public services, as well as the Federal American Disability Act. Conference attendees learned about services that the Division on Civil Rights has to offer, including how to file a complaint and ways the Division can accommodate the individual with transportation or mobility issues.

The committee, composed of representatives from the Division of Mental Health Services, the New Jersey Council on Developmental Disabilities, and the Division on Civil Rights, had been planning the conferences since November. They dedicated their time and energy to ensure that the conference provided a diverse and enriching group of experts who will focus on a wide range of mental disability issues.

The conference was co-sponsored by the Office of Acting Governor Richard J. Codey, New Jersey Attorney General Peter

C. Harvey, Equal Employment Opportunities Commission, New Jersey Division of Mental Health Services, New Jersey Council on Developmental Disabilities, New Jersey Mental Health Task Force, New Jersey Human Relations Council, Bergen County Division of Disability Services, Bergen Community College Office of Specialized Services, and Ancora Psychiatric Hospital.

The 2<sup>nd</sup> annual Disability Law Conference was held twice, once in each location. The first conference was on Wednesday, March 9 at the Ancora Psychiatric Hospital, and the second conference was on Wednesday, March 23 at Bergen Community College.

Both sessions were well attended by constituents, advocates and members of the press. The Division would like to thank all participants and attendees for a successful conference. ▼



## Education is the Key to Combating Discrimination



*Dr. Joan Rivitz*

When Dr. Joan Rivitz received a call at dinner time from the Governor's Appointment Council asking her if she would serve on the Commission on Civil Rights, she was thrilled, but in effect

she had spent her entire life preparing for this appointment.

As a descendent of Holocaust survivors, Commissioner Rivitz grew up with a strong sense of justice. She was raised with stories about the ordeal that her grandmother and great aunt experienced in concentration camps. Accounts of infamous places like Auschwitz were not fuzzy facts of European history for her, but nightmares imparted to her by people she loved who were there.

Commissioner Rivitz, who is devoted to her family, received her Ph.D. in education from Columbia University. She has been married for thirty-five years and has two sons and a daughter-in-law. She considers herself extraordinarily proud to be an American and is grateful for the opportunities the United States affords.

Commissioner Rivitz's hectic merry-go-round, as she refers to her tightly booked schedule, is a lifelong outreach campaign against bias, prejudice and bigotry. She works closely with the New Jersey Commission on Holocaust Education, Office of Bias Crime and Community Relations, and she is the Chair of the Advisory Board of the New Jersey Human Relations Council. Commissioner Rivitz works on anti-bullying projects throughout New Jersey and believes that most issues can be resolved through education.

She dedicates her time tirelessly, because, as she says, "fighting bias, prejudice and bigotry are my mission." She's just energized about being a member of the Commission on Civil Rights in this fight for justice and working with the Division on Civil Rights.

The Division is stronger than ever and fighting to protect NJ residents," she says. "Director Vespa-Papaleo, his dedicated staff and the Commission are wonderful to work with." Commissioner Rivitz is proud that she has been able to be associated with the Division as it has made some groundbreaking decisions which have greatly contributed to the cause of ending unlawful discrimination in New Jersey. "I am grateful to the Division for making such great strides against bullying in schools and in making movie theaters more accessible to the deaf and blind. New Jersey is truly the nation's leader in civil rights." ▼

## New Regulations Proposed

The Division has revamped its Rules of Practice and Procedure, which provide the "rules of the road" for how a case before the agency is processed.

The Division's rules of practice have been added to and modified at various points over the years, which has created the current patchwork of rules that are difficult to follow and, in some cases, outdated. In a process that began over a year ago, a cross-section of Division employees – investigators, managers, attorneys – formed a committee to examine the current rules and determine how they could be updated. After reviewing the agency's current practices as well as rules from other states, a new set of rules was developed.

The Division is proposing to repeal its current rules of practices and procedures in its entirety. The proposed new rules will be reorganized and easier to follow, as they will track how a complaint proceeds through the agency. The proposed new rules will also assist in allowing the Division to better

focus its resources for investigating discrimination complaints. For example, the new rules will provide for the Director to administratively dismiss a complaint when the complainant has refused to accept what the Director deems to be a reasonable offer of settlement from a respondent. Also, the rules will streamline the process for issuing defaults against respondents that stonewall the Division during an investigation. The proposed new rules will also address for the first time the rules related the Division's successful mediation program.

The proposed new rules were published on April 18 for public comment in the New Jersey Register sometime in early spring. The public has until June 17, 2005 to submit written comments to Assistant Director Gary LoCassio at 140 East Front Street, PO Box 089, Trenton, NJ 08625. The rules are also available for review on the Division's Web site, [www.NJCivilRights.org](http://www.NJCivilRights.org). ▼

### Save the Date!

**June 14, 2005**  
**6:00 - 10:00 pm**

**Gay, Lesbian, Bisexual  
& Transgender Rights  
Conference**

To be held at  
Rutgers University  
Douglass College Student  
Center, Traves Hall  
New Brunswick, NJ

For more information,  
please visit

[www.NJCivilRights.org](http://www.NJCivilRights.org)

## Division and Commission Honor Black History Month

The Division on Civil Rights and the NJ Commission on Civil Rights hosted its Black History Month program, entitled "Celebrating the History of Our Ancestors Through Art and Poetry." The program was held on February 8, 2005 and is the Division's second annual celebration. It featured a series of poetry readings from Ewure Osayande, poet laureate of Rutgers University, Camden and a display of African artifacts from renowned exhibitionist Herman Bigham, who is affiliated with the Walt Whitman Arts Center in Camden.

"This year's black history month program was truly a learning experience to understand the tremendous influence that African Art and poetry has had on African American culture from a historical perspective," said Assistant Director Philip Freeman, who coordinated the program with other staff members. "I'm looking forward to an exceptional exhibition display and poetry reading."

The Division welcomed approximately 50 guests to the program, which include members of the NJ Commission on Civil Rights, NJ Human Relations Council, and the NJ Human Relations Advisory Board. ▼



*left At the celebration: NJ Civil Rights Commissioner John Campbell; Herman Bigham, Assistant Director Philip Freeman; Dr. Irene Hill-Smith, Member of the US Commission on Civil Rights Advisory Committee; Ewure Osayande, poet laureate at Rutgers University; and Director Vespa-Papaleo (not pictured).*

*right Herman Bigham presents the beauty of African art to Division staff.*



State of New Jersey  
**Office of The Attorney General**  
Department of Law & Public Safety

Division on Civil Rights **Outreach**

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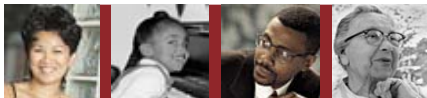
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[www.NJCivilRights.org](http://www.NJCivilRights.org)





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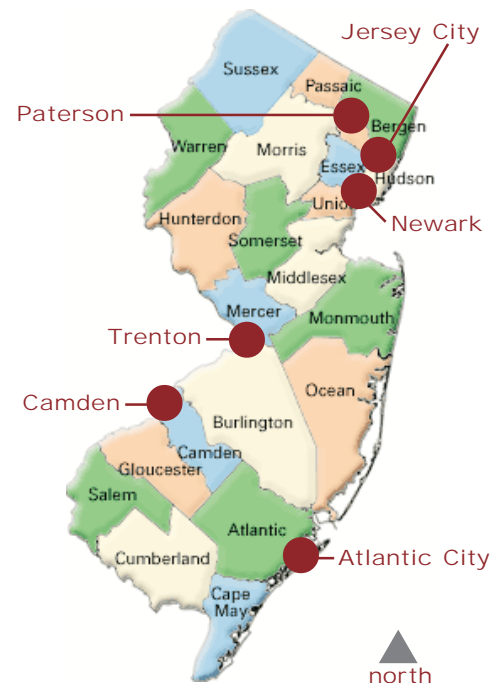
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And we're on the Web for you at [www.NJCivilRights.org](http://www.NJCivilRights.org)

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New Jersey Office of the Attorney General  
Department of Law and Public Safety

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